
Commerce & Labor Committee

HB 2734

Brief Description: Providing for disqualification from unemployment compensation due to intoxication.

Sponsors: Representatives Clements, Chandler and Condotta.

Brief Summary of Bill

- Makes it "misconduct" for unemployment compensation purposes if an employee was using or was under the influence of drugs or alcohol while acting in the scope of employment and either driving, being in control of a motor vehicle, or employed in an identified safety sensitive position.

Hearing Date: 1/26/06

Staff: Elisabeth Frost (786-5793) and Jill Reinmuth (786-7134).

Background:

To receive unemployment compensation, an individual must separate from employment through no fault of his or her own or quit work for good cause. A person who is discharged or suspended for misconduct connected with his or her work is disqualified from unemployment compensation for ten weeks and until he or she earns wages equal to ten times his or her weekly benefit amount.

Washington Unemployment Compensation Statutes on Misconduct: From 1993 to 2004, the unemployment compensation law defined "misconduct" as: "an employee's act or failure to act in willful disregard of his or her employer's interest where the effect of the employee's act or failure to act is to harm the employer's business." Beginning with claims that have an effective date on or after January 4, 2004, the unemployment compensation law identifies eleven non-exclusive examples of misconduct, including deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee. None of the listed examples of misconduct directly mention drug or alcohol use. Under both laws an employee is barred from raising alcoholism as a defense to disqualification from benefits due to misconduct.

Case Law: No published decisions of either the Washington Court of Appeals or the Washington Supreme Court address disqualification due to misconduct related to drug or alcohol use since the implementation of the 2003 misconduct statute, which applies to claims with an effective date on or after January 4, 2004.

In 2000, in an unpublished opinion, the Washington Court of Appeals found that a grocery store deli clerk who was discharged because she reported to work under the influence of alcohol in violation of her employer's work rules was justifiably denied benefits for misconduct.

Summary of Bill:

For claims with an effective date on or after the bill's effective date, the following conduct is listed as constituting "misconduct" for unemployment compensation purposes:

- using or being under the influence of intoxicating liquor or any nonprescribed controlled substance when the employee is driving or in actual physical control of a motor vehicle while acting in the scope of employment; or
- using or being under the influence of intoxicating liquor or any nonprescribed controlled substance when the employee is acting within the scope of employment in a position identified as a safety-sensitive position by a written employer policy that was in effect when the conduct occurred. The affected employee must have received actual notice of the policy.

Listing this conduct as "misconduct" does not limit the application of the misconduct law to other kinds of behavior involving intoxicating liquor or controlled substances.

"Controlled substance" is defined as in the Controlled Substances Act, meaning a drug, substance, or precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

"Under the influence" is defined as the standard established by the employer in a written policy in effect when the conduct occurred and of which the employee received actual notice. In the event that no such policy was established, the standard for "under the influence" shall be the same as the law requires for a person to be guilty of driving under the influence.

A "motor vehicle" means every vehicle that is self-propelled, propelled by electric power obtained from overhead trolley wires, and vehicles classified as "neighborhood electric vehicles." It does not include vehicles operated upon rails, electric personal assistive mobility devices, or power wheelchairs.

Technical changes are made to make references to "employee" consistent throughout these provisions.

Rules Authority: The Commissioner of the Employment Security Department is granted rule making authority as necessary to implement the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.